

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
FRANK C. FUNDINGSLAND,)
)
Appellant,)
)
v.)
)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
)
Respondent.)

PCHE No. 78-262

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of two \$250 civil penalties for outdoor burning allegedly in violation of RCW 70.94.775 (prohibited materials), came before the Pollution Control Hearings Board on March 9, 1979, in Longview, Washington. Hearing examiner William A. Harrison presided alone. Appellant appeared by his attorney, Wayne Roethler. Respondent appeared by its attorney, James D. Ladley. Olympia reporter Marilyn Hoban recorded the proceedings. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Witnesses were sworn and testified. Exhibits were examined.

WAH/LB

1 The Board having read the transcript of the proceedings, examined
2 the exhibits, having considered the records and files herein and having
3 reviewed the Proposed Findings of Fact, Conclusions of Law and Order
4 of the Presiding Officer; and

5 The Board having received exceptions to said Proposed Findings
6 of Fact, Conclusions of Law and Order from the appellant, Fundingsland,
7 on March 29, 1979, and having considered and denied appellant's
8 exceptions, the Board makes these

9 FINDINGS OF FACT

10 I

11 Respondent, pursuant to RCW 43.21B.260, has filed with this
12 Board a certified copy of its Regulation I containing respondent's
13 regulations and amendments thereto of which official notice
14 is taken.

15 II

16 Appellant, Frank C. Fundingsland, has been a real estate agent
17 and developer for some twenty years. In 1978, he purchased a parcel
18 of real estate at 601 North First Street, Kelso, with the intention
19 of demolishing the vacant building located on that site.

20 III

21 On November 21, 1978 appellant telephoned respondent and asked
22 whether he might legally dispose of "window surrounds" and door frames
23 by outdoor burning on the above site. Respondent replied that he
24 could not.

25 Shortly afterward, appellant sought and obtained an open burning
26 permit from the Kelso Fire Department. This permit authorized "the

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1 burning of natural vegetation only" and required the permittee,
2 appellant, to "determine each day before burning whether such burning
3 is being permitted by the pollution control authority'.

4 IV

5 Thereafter, on Friday, November 24, 1978 appellant personally
6 ignited a fire on the demolition site. At 3:00 p.m. appellant allowed
7 the fire to "burn down", relying on the rainfall to extinguish it.
8 He applied no water, dirt or other agent to the fire before leaving
9 at 4:30 p.m., but checked the site "to make sure that it was out".

10 On Saturday, November 25, 1978, at 1:38 p.m., a fire was
11 observed by a Kelso police officer at the site. The fire
12 was some four feet in diameter, contained a partially burned tire,
13 and emitted heavy dark smoke. There was no one in attendance at the
14 fire. The police officer summoned the Kelso Fire Department which
15 extinguished the fire and reported it to both appellant and
16 respondent. After learning of the fire, appellant went to the Kelso Fire
17 Department later the same day and was told that his fire
18 department permit was revoked. Appellant subsequently received
19 a Notice of Violation and Order from respondent assessing a \$250 civil
20 penalty. Appellant appeals from this.

21 V

22 On Monday, November 27, 1978 appellant sought out the Kelso
23 Fire Chief and asked for permission to burn the window surrounds and
24 door frames on the demolition site. Appellant testified at hearing
25 that the Chief replied by saying that appellant may do so under the
26 fire department permit, that it would be against respondent's rules,

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1 but to go ahead with the burning, nevertheless, keeping the piles small
2 and away from buildings. The appellant stipulates that he even went
3 to the demolition site and caused an outdoor fire containing "window
4 surrounds." Acting on a report from the Kelso Fire Chief, respondent
5 dispatched an inspector to the site where there was a fire approximately
6 four feet in diameter containing painted boards and which had been
7 caused by appellant. The inspector ordered the fire extinguished,
8 and the appellant extinguished it. Appellant later received a Notice
9 of Violation and Order from respondent assessing a \$250 civil penalty.
10 From this, appellant appeals.

11 The respondent acted in good faith upon a report of air pollution
12 received in the ordinary course, and did not conspire with
13 any person in issuing this Notice of Violation.

14 VI

15 Any Conclusion of Law which should be deemed a Finding of Fact
16 is hereby adopted as such.

17 From these Findings the Pollution Control Hearings Board comes
18 to these

19 CONCLUSIONS OF LAW

20 I

21 The Notices of Violation in this matter cite RCW 70.94.775 which
22 is a provision of the State Clean Air Act containing this prohibition:

23 No person shall cause or allow any outdoor
24 fire:

25 (1) Containing garbage, dead animals,
26 asphalt, petroleum products, paints, rubber
products, plastics, or any substance other
than natural vegetation which normally emits
dense smoke or obnoxious odors except as

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provided in RCW 70.94.650: Provided, That
agricultural heating devices which otherwise
meet the requirements of this chapter shall
not be considered outdoor fires under this
section:

. . . .

Section 2.10 of respondent's Regulation I and RCW 70.94.431 authorize
a maximum civil penalty of \$250 for each violation of chapter 70.94 RCW.

We now take up the facts of November 25 and 27, 1978, separately,
and apply this law to the facts of each day as we have found them.

II

November 25, 1978. While the appellant did not deliberately set
an outdoor fire on the date in question, we have long held that one
may "cause or allow" a fire by failing to take reasonably prudent
precautions to put the fire out. Burlington Northern Railroad v.
PSAPCA, PCHB No. 100 (1972), A-1 Auto Wrecking v. PSAPCA, PCHB No. 337
(1973) and Northwest Pipe and Steel v. PSAPCA, PCHB No. 468 (1974).
By relying solely on rainfall or "burning down" to extinguish the
fire of November 24, 1978 appellant failed to take reasonably prudent
precautions to put that fire out. He therefore caused or allowed the
continuation of that fire which on November 25, 1978 consumed prohibitive
materials (a tire or other material emitting dense smoke). Appellant
therefore violated RCW 70.94.775 on November 25, 1978. The civil
penalty assessed is reasonable in the circumstances.

III

November 27, 1978. Appellant caused or allowed a fire containing
prohibited materials, and therefore violated RCW 70.94.775 on
November 27, 1978.

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1 Despite this, appellant urges that he was lured or mislead into
2 the violation by statements of a public official, the Kelso Fire
3 Chief, and thus is deserving of leniency. We disagree. By his own
4 testimony appellant was notified, once by respondent and once by the
5 Kelso Fire Chief, that an outdoor fire of the type he subsequently
6 caused was not lawful under applicable air pollution regulations. The
7 appellant therefore caused his fire in bad faith and with unwarranted
8 confidence that his activity would not be reported to the respondent. The
9 facts of this violation amply justify the maximum civil penalty which was
10 assessed.

11 IV

12 Any Finding of Fact which should be deemed a Conclusions of Law
13 is hereby adopted as such.

14 From these Conclusions, the Board enters this

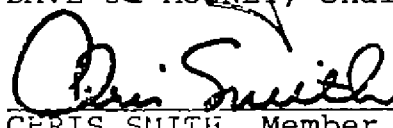
15 ORDER

16 The two \$250 civil penalties are each affirmed.

17 DONE at Lacey, Washington, this 29th day of May, 1979.

18 POLLUTION CONTROL HEARINGS BOARD

19 
20 DAVE J. MOONEY, Chairman

21 
22 CHRIS SMITH, Member

23
24 DAVID AKANA, Member

25
26 FINAL FINDINGS OF FACT,
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